TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 966

CHARLES JOBIN, APPELLANT,

vs.

THE STATE OF ARIZONA

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

FILED FEBRUARY 19, 1942.

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[fol. 3]

IN THE POLICE COURT OF THE CITY OF CASA GRANDE, PENAL COUNTY, STATE OF ARIZONA

THE STATE OF ARIZONA

against

CHAS JOBIN, Defendant

AMENDED COMPLAINT

Personally appeared before me this 22nd day of August, 1940, Guy Baker of said City of Casa Grande, who being first duly sworn complains and says: That one Chas. Jobin, on or about the 15th day of August, 1940, at said City of Casa Grande, County and State aforesaid, committed a misdemeanor as follows, to-wit:

That said Chas. Jobin, not then and there having a permanent place of business in the City of Casa Grande, County and State aforesaid, did then and there wilfully and unlawfully carry on the business of peddling, vending, selling, offering for sale and soliciting the sale of goods, wares and merchandise, to-wit: pamphlets, books and publications without first having procured a license from the said City of Casa Grande so to do, as required by Ordinance Number 101, New Series, of said City of Casa Grande.

All of which is contrary to the form of the ordinance in such cases made and provided, and against the peace and dignity of the City of Casa Grande, and the said State of Arizona.

Guy Baker.

Subscribed and sworn to before me this 22nd day of August, 1940. Walter B. Love, Jr., Police Magistrate.

Filed Oct. 8, 1940. T. J. Marks, Clerk, Superior Court of Pinal County.

1—966

[fol. 4] EXHIBIT "A" TO AMENDED COMPLAINT

Business License Ordinance

Casa Grande, Arizona

Ordinance Number 101, New Series

An Ordinance of the Mayor and the Common Council of the City of Casa Grande, Arizona, Providing for Licensing and Regulating the Carrying on and/or Operating of Certain Professions, Trades, Callings, Businesses and Occupations Carried on Within the Limits of the City of Casa Grande, Arizona, and Providing Punishment for Violations Hereof, Repealing All Ordinances and Parts of Ordinances in Conflict Herewith and Declaring an Emergency.

Be It Ordained by the Mayor and Common Council of the City of Casa Grande, Arizona, as Follows, to-wit:

Section 1

It shall be unlawful for any person or persons, firms, associations or bodies corporate, or otherwise, or as officers of any corporation, to carry on any trade, calling, profession, occupation or business, in this ordinance specified, without first having procured a license from the City of Casa Grande, so to do, or complying with any and all regulations of such trade, calling, profession, occupation or business mentioned in this ordinance, and each and every day or fractional part of a day that any trade, calling, profession, business or occupation in this ordinance specified is conducted or carried on without such license shall be a misdemeanor, and, except where a different punishment is prescribed by this ordinance, the offender shall be punished by a fine of not more than Two Hundred Dollars ($200.00), or imprisonment in jail for a term of not more than Ninety (90) days, or by both such fine and imprisonment; and the amount of such license fee shall be deemed a debt due and owing to the City of Casa Grande in any court of competent jurisdiction, and such person or persons, firm, association or body corporate, so failing to pay any such license shall be liable to an action in the name of the City of Casa Grande for the amount of the license fee of such trade, calling profession, business or

occupation as he or they shall be engaged in, together with all costs of suit and a reasonable attorney's fee shall also be awarded to the said City of Casa Grande by said court for the bringing of said suit.

Section 2

It shall be the duty of the City Clerk of the City of Casa Grande to prepare and to issue a license under this ordinance for every person, firm, company, or corporation liable to pay a license hereunder, and to state in each license the amount thereof, the period of time covered thereby, the name of the person, firm or corporation for whom issued, the trade, calling, profession, occupation or business licensed, and the location or place of business where said trade, calling, profession, occupation or business is carried on.

In no case shall any mistake of the City Clerk in stating the amount of a license prevent or prejudice the collection for the City of what shall be actually due from any one [fol. 4a] carrying on a trade, calling, profession, occupation or business, subject to license under this ordinance.

Section 3

All licenses required by this Ordinance shall be paid in advance, in legal currency of the United States of America, at the office of the City Clerk of the City of Casa Grande, Arizona.

A separate license must be obtained for each branch establishment or separate place of business in which any trade, calling, profession, occupation or business is carried on, and each license shall authorize the party obtaining it to carry on, pursue or conduct only that trade, calling, profession, occupation or business described in such license, and only at the location or place of business which is indicated thereby.

Section 4

Every person, firm, company or corporation having a license under the provisions of this ordinance, and carrying on a trade, calling, profession, occupation or business at a fixed place of business shall keep such license posted and exhibited, while in force, in some conspicuous part of

said place of business. Every person having such a license, and not having a fixed place of business shall carry such license with him at all times while carrying on the trade, calling, profession, occupation or business for which the same was granted. Every person, firm, company or corporation having a license under the provisions of this ordinance shall produce and exhibit the same, when applying for a renewal thereof, and whenever requested to do so by any police officer or by any other officer authorized to issue, inspect or collect licenses.

Section 5

The City Marshal shall have and exercise the power to make arrests for the violation of any of the provisions of this ordinance, and to enter free of charge at any time any place of business for which a license is required by this ordinance, and to demand the exhibition of such license for the current term, from any person engaged or employed in the transaction of any such business, and if such person shall then and there fail to exhibit such license, such person shall be liable to the penalty provided for the violation of this ordinance.

It is hereby the duty of the City Marshal, and so made by this ordinance, to cause complaints to be filed against all persons violating any of the provisions of this ordinance.

Any City Marshal failing or neglecting for more than thirty days to report any person, firm, company or corporation who or which is engaged in carrying on business without having paid the required license, shall be deemed guilty of neglect of duty and be either suspended from duty or dismissed from service in the discretion of the majority of the Common Council of the City of Casa Grande.

Section 6

The City Marshal, shall on or before the 10th and 20th of each and every month, pay over to the City Clerk all licenses collected by him during the previous days of such month, and report the total amount thereof at the next regular meeting of the Common Council.

Section 7

No license granted or issued under the provisions of this ordinance shall be in any manner assignable or transferable

to any other person, firm, company or corporation other than is therein mentioned or named, without permission from the Mayor or Council so to do.

Section 8

Any person wishing to sell, or dispose of for a consideration, within the City of Casa Grande, any farm or agricultural product, produced by himself, shall be exempted from paying any license tax hereunder for the privilege of [fol. 5] selling such products only, but before he shall be entitled to such exemption he shall make affidavit of the facts entitling him to such exemption and file the same with the City Clerk of the City of Casa Grande.

Section 9

Merchants defined: As used in this ordinance the term "Merchants" includes persons, firms, corporations, or companies, who at a fixed place sell any goods, wares, or merchandise on commission or otherwise, including milliners, tailors, machine shops, factories and all other occupations not specifically licensed in this ordinance.

Merchants shall pay a quarterly license fee in the sum of two and 50/100 Dollars ($2.50).

Section 10

Hotels are to be specifically licensed under this ordinance according to such classification as is hereinafter provided, to-wit: all Hotels having four or more rooms and auto courts having four or more cabins shall pay a quarterly license tax of $2.50.

Section 11

All businesses or occupations listed specifically hereunder shall pay such quarterly license tax as hereinafter is set forth, to-wit:

1 Abstract Companies	$2.50
2. Advertising	2.50
3. Automobile for hire	2.50
4. Auctioneers	2.50
5. Billiard Halls	2.50
6. Banks	5.00
7. Barber Shops	2.50

8. Bowling Alleys	2.50
9. Collection Agencies	2.50
10. Contractors	2.50
11. Skating Rinks	2.50
12. Circus (per performance)	25.00
13. Carnival (per day)	25.00
14. Express Company	2.50
15. Electric Light Companies	10.00
16. Fruit Stands (exclusive sale)	2.50
17. Gas Companies	10.00
18. Ice Dealers	10.00
19. Hospitals	2.50
20. Junk Dealers	2.50
21. Laundry	2.50
22. Photographing	2.50
23. Pawnbrokers	2.50
24. Lunch Counters and Cafes	2.50
25. Real Estates Agents and/or Insurance	2.50
26. Theatrical Houses	2.50
27. Telegraph	2.50
28. Telephone	10.00
29. Undertakers	2.50
30. Warehouses	2.50
31. Tent Shows (each—per day)	5.00
32. Dog and Pony Shows (per day)	5.00
33. All transient Shows (out of licensed theatre (per day)	5.00
34. News papers	2.50
35. Printing offices	2.50
36. Freight and Transfer lines	2.50
37. Attorneys at Law (each)	2.50
38. Dentists	2.50
39. Doctors	2.50
40. Chiropractoric doctors	2.50
41. Beauty Parlors	2.50
42. Dairies	10.00
43. Retail liquor dispensers	10.00
a. Retail wine and beer	10.00
44. Wholesale Firms	10.00
45. Lumber Yards	2.50
46. Creameries	2.50
46. Automobile service stations	2.50

Section 12

Peddlers, Transient Merchants; Venders. defined:

(A) "Transient Merchant" within the meaning of this ordinance shall include every person who, not for or in connection with a business at a fixed place within the City of Casa Grande, solicits orders from house to house for the future delivery of goods, or who shall deliver goods previously solicited by a solicitor, at retail, or an order for future delivery.

(B) As used in this ordinance, the term "peddlers" shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande, and who are [fols. 5a-6] not specifically licensed or permitted to sell any class of goods whatsoever.

(C) As used in this Ordinance, the term "Street Vendors" includes all persons engaged in selling in or upon the streets, alleys or vacant grounds within the City, any goods, wares, merchandise or articles, including photographs, and also includes all persons engaged in conducting upon the streets, alleys, or vacant grounds of the City any ring, knife or similar game, or any "faker" business, game or device.

All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of Twenty Five Dollars ($25.00), in advance.

Any person who does not have a licensed place of business in Casa Grande and who delivers any kind of merchandise or service to retailers in the City by truck or car shall pay a quarterly license fee of $10.00.

Section 13

The word "person" as used herein shall refer to any individual, business, profession, co-partnership, firm, association or corporation affected by the provisions hereof.

Section 14

If any word, sentence, phrase, clause, paragraph, section or subsection hereof shall by any court be held to be, for any reason, unlawful, illegal or unconstitutional, the said holding of said court shall not affect the rest of this ordinance, and the Common Council of the City of Casa Grande hereby

declares that it would pass and adopt this said ordinance in its legal form after the removal of said word, sentence, phrase, clause, paragraph, section or subsection so held to be unlawful, illegal or unconstitutional, and the remainder of this said ordinance is hereby ordained and adopted.

Section 15

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 16

That, owing to the present inadequate ordinances regulating the aforesaid businesses and callings by license and such regulation is urgently demanded for the best interest of the City of Casa Grande and its inhabitants, and it is necessary that this ordinance shall be effective and in operation at an early date, and it is therefore necessary for the preservation of the peace, health and safety of the City of Casa Grande, Arizona, that this ordinance shall become immediately operative and effective;

Now, therefore, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its final passage and adoption and approval by the Mayor and the Common Council of the said City of Casa Grande, and after its posting as required by law.

Passed by the Common Council of the City of Casa Grande this 31st day of December, A. D., 1934.

Approved: Paul Stein, Mayor.
Attest:—A. L. Hoffman, City Clerk.
Posted this 31st day of December, 1934.
A. L. Hoffman, City Clerk.

[fols. 7-8] IN SUPERIOR COURT OF THE STATE OF ARIZONA, IN AND FOR THE COUNTY OF PINAL

No. 1783 (Criminal)

STATE OF ARIZONA, Plaintiff,

v.

CHARLES JOBIN, Defendant

Statement of Evidence—Filed March 31, 1941

APPEARANCES:

For the State: Charles H. Reed, Esq., Special Prosecutor, Coolidge, Arizona.

For the Defendant: Charlie W. Clark, First Nat'l Bank Bldg., Phoenix, Arizona.

[fol. 9] Be It Known, that on the 15th day of November, 1940, there came on for jury trial in the Superior Court of Pinal County, Arizona, the cause of State of Arizona v. Charles Jobin, the State appearing by Chas. H. Reed, Esq., Special Prosecuting attorney, and the defendant in person and accompanied by counsel, Charlie W. Clark, Esq., and all parties announcing ready for trial, the empaneling of a jury is begun, and 18 jurors are drawn from the box by the Clerk, and duly sworn to answer questions touching their qualifications to serve in this cause, and being as shown by the list kept by the Clerk, and were examined in open court by Hon. Levi S. Udall, Judge of the Superior Court of Apache County, Arizona, presiding in place of Hon. E. W. McFarland, the regular judge of said court, and the following proceedings were had:

EXAMINATION OF JURY

The Court: Gentlemen of the jury, the matter about which you will now be interrogated as to your qualifications as jurors, is on a conviction under a complaint filed in Police Court in the City of Casa Grande in this County, which is now on appeal from that court. The defendant, who sits here at his counsel's right, is charged by an amended com-[fol. 10] plaint filed in that court on August 18, 1940, with having distributed certain literature—the complaint will

be read to you shortly—without first having procured a license from the City of Casa Grande, as required by the city ordinance. The court will ask you questions in regard to your qualifications.

I admonish you that both the court and counsel have a right to know the state of your minds with reference to this particular matter and if you will be free and raise your hands to questions propounded to you, it will facilitate matters.

First, are any of you jurors related in any degree by blood or marriage to the defendant? If so, please indicate it by raising your hand?

(No hands raised.)

The complaining witness in this case is Guy J. Baker; do any of you have any relationship of that kind with him? (No answers.)

Do any of you have any unfinished business relations with the attorneys in this case, either with the County Attorney's office or Mr. Clark of Phoenix, representing the defendant? (None.)

Are any of you gentlemen on the defendant's bond? (No answers.)

[fol. 11] Do any of you have any bias for or prejudice against the defendant? (None.)

May I see the hands of those of you who are personally acquainted with the defendant? (No hands raised.)

Have any of you heard the facts or purported facts in connection with this case? Have you read or heard of anything about the case or heard the matter discussed in any way? (No answers.)

I take it, then, none of you have talked to any witness or the defendant or any one claiming to know anything about this matter. If you have please raise your hand. (None raised.)

Have any of you formed or expressed any opinion as to the guilt or innocence of this defendant? (No answer.)

Now, gentlemen of the jury, in any criminal case the court wants to advise you the mere filing of a complaint or information does not raise any presumption of guilt. That is merely the method the defendant is brought before the bar of justice, and you should not consider the mere filing of a complaint any evidence against the defendant. You

must try the case solely on the evidence that is adduced before you. In other words, what I am getting at is this: [fol. 12] You have no right to try any case except on the sworn testimony on the witness stand and no right to take anything else into consideration. In any criminal case, by law you are made the sole judges of the facts, and it becomes the cuty of the court at the proper time to instruct you as to the law, and whether you agree with the instructions of the coourt gives you or not, it is your inviolate duty to follow those instructions. Is there any juror who would not abide by those instructions as to the law governing the case, if you are selected as a juror to try the case? (No answers.)

Now, gentlemen, in criminal cases, it is incumbent on the State of Arizona to prove the defendant is guilty beyond a reasonable doubt; it is not incumbent on the defendant to prove his innocence. It is incumbent on the State to prove beyond a reasonable doubt he is guilty. Is there any juror who would not require the State to prove it's case to you beyond a reasonable doubt as that term will be subsequently defined to you? If you may, indicate it. (No answer.)

Gentlemen, in every criminal case there is what is termed in law a legal presumption of innocence. In other words, this defendant stands before you now, and while he is [fol. 13] charged with an offense, he is presumed to be innocent, and it is your duty to give him the benefit of that presumption. Is there any juror who would not be willing to give to this defendant at the outset the benefit of the presumption of innocence to which he is entitled? (No answer.)

Probably the best test we can apply to determine whether a juror is qualified or disqualified is this: If one of you gentlemen were so unfortunate as to be brought before the bar of justice, charged with a crime or criminal off nse, would you be willing to be tried by twelve men now in your present frame of mind? If any of you would not be willing to be tried if the situation were reversed, you may indicate? (No indications.)

Are there any other questions you gentlemen (counsel) may have?

Mr. Reed: I would like to ask a few questions. Do any of you gentlemen belong to or subscribe to the belief or

teachings of the religious sect known as Jehovah's Witnesses? (None.)

If the evidence in this case should show the defendant is a minister and a preacher in the religious sect or faith which [fol. 14] has as one of it's principles that it doesn't believe in saluting the American flag or bearing arms——

Mr. Clark: I object to that, your honor on the ground it is prejudicial. It is not in the information.

The Court: Yes, that's right.

Mr. Reed: May I ask my question? If that should appear from the evidence would that affect any of you gentlemen.

Mr. Clark: I object on the same grounds, your Honor, and suggest that the nature of that last question and the previous one is a ground for a mistrial.

The Court: The objection to the question will be sustained, and the motion for mistrial will be denied.

Mr. Reed: No further questions.

Mr. Clark: Is there any of you gentlemen who doesn't believe in the liberty of religious freedom as guaranteed by the Constitution of the United States? (None.)

Are there any of you who believe that certain people or certain religions or forms of Christianity, because they may be contrary to your or my personal beliefs, should be suppressed? (None.)

[fol. 15] Are there any of you who would not give a Jehovah's Witness, a Jew or a Mohammedan the same fair and impartial trial? (None.) Pass the panel.

Thereupon (at 9:45 a. m.) the list of jurors was given to counsel to exercise their peremptory challenges.

The Court: You are now potential jurors in this case, and I admonish you not to discuss this case among yourselves or permit anyone else to discuss it in your presence. If they attempt to do so tell them you are prospective jurors in the case, and if they insist on doing so, report the matter to the Court for punishment. You may retire and be in your seats in 10 minutes.

Trial Jury

Thereupon, the parties having exercised their peremptory challenges, the following first twelve names on the list remaining unchallenged are selected as the jury to try the case, as follows:

Donald Moore	John A. Foreman
R. E. Foster	R. J. Edwards
Louis Cathemer	Henry V. Johnson
E. S. Allen	H. G. Hart
Tolbert Pruit	C. T. Wood
John L. Sims	Elmer Mathews

Thereupon the following proceedings were had:

[fol. 16] The Court: I am just informed by the Clerk that the record does not show the defendant has been arraigned in this court since the appeal. Do I understand, Mr. Clark, that your are willing to waive any informality in that?

PLEA OF NOT GUILTY

Mr. Clark: That's true, your Honor. We waive the reading of the amended complaint and enter a plea of not guilty.

The Court: The record may show that action. Mr. Clerk, you may call the names of the first 12 jurors unchallenged on the list. (Thereupon the above-named jurors were called, answered, and were duly sworn to try the cause.) The Clerk will read to you the amended complaint filed in the lower court in Casa Grande. (Amended complaint read by the Clerk.)

The Clerk (Mr. Marks): To this complaint the defendant has entered a plea of not-guilty.

Mr. Clark: At this time we ask that the rule be invoked.

(Thereupon, State's and defendant's witnesses were called and sworn, and after being duly admonished, permitted to retire from the court room, with the exception of Guy J. Baker, deputy Sheriff and complaining witness.)

Mr. Reed: I would like to make an opening statement, your honor.

[fol. 17] The Court: Very well.

OPENING STATEMENT

Mr. Reed: Gentlemen of the jury, this case as has been explained to you, is the trial of an appeal from the conviction or prosecution under the city of Casa Grande Ordinance No. 101, new series, which ordinance provides for the licensing of certain businesses, occupations, callings

and trades, and requires payment of license or a license fee before issuing such license. Among the occupations covered is that of peddler. The evidence in behalf of the State will show the defendant, Charles Jobin on or about the 15th of August of this year, came to Casa Grande. That he went from place to place and from residence to residence and offered for sale and sold certain books and pamphlets. That he did not then have, nor has he ever had a license as required by the ordinance for carrying on that business. That will be the evidence under which, when we submit it, we shall ask for a conviction.

The Court: Mr. Clark, do you care to make a statement now?

Mr. Clark: I will reserve my statement.

The Court: Very well, proceed.

Thereupon the following testimony of witnesses heretofore sworn was introduced:

[fol. 18] A. L. HOFFMAN, heretofore duly sworn, a witness for the State, testified as follows:

Mr. Reed: I would like to have Ordinance No. 101, new series, marked. (Same marked State Exhibit 1). I offer in evidence plaintiff's exhibit 1 marked for identification?

Mr. Clark: No objection.

The Court: It may be admitted. This is a true copy of the ordinance of the City of Casa Grande?

Mr. Reed: Yes, it is certified by Mr. Pace, the mayor, and the city Clerk, and it is offered in accordance with Sec. 4453 of the Code.

Examination by Mr. Reed:

Q. State your name.

A. A. L. Hoffman.

Q. Where do you live?

A. In Casa Grande, Arizona.

Q. What office or official position if any do you hold?

A. City Clerk, Treasurer and Superintendent of Streets.

Q. How long have you been City Clerk?

A. About 10 years.

Q. Do you know the defendant here?

[fol. 19] A. I have seen him.

Q. Will you state whether or not as a part of your official duties as Clerk of the City of Casa Grande you have in

your custody the records of licenses issued under city ordinance No. 101 New Series, of the City of Casa Grande?

A. I have.

Q. State whether or not the defendant Charles Jobin on the 15th day of August of this year had such a license?

Mr. Clark: We object, as the records of the City of Casa Grande would be the best evidence.

The Court: Overruled, he may answer.

A. He has not.

Q. Has he ever had such a license?

A. No, sir.

Mr. Reed: You may cross-examine.

Mr. Clark: No cross-examination.

Witness excused.

Connie Richerson, heretofore sworn, a witness for the State, testified as follows:

Examination by Mr. Reed:

Q. Your name is Connie Richerson?

[fol. 20] A. Yes, sir.

Q. You live in Casa Grande, do you not?

A. Yes.

Q. How long have you lived there?

A. All my life.

Q. How old are you?

A. Sixteen.

Q. Will you look at the defendant, please? When did you first see the defendant?

A. August 15th, I believe.

Q. Of this year?

A. Yes.

Q. Where did you see him?

A. In my home.

Q. In Casa Grande?

A. Yes, sir.

Q. What time of the day was it?

A. It was in the morning about 9 or 9:30.

Q. Just go ahead and in your own words relate what took place?

A. I was home with my little sister, and someone knocked at the door, and there was a man and woman out on the porch, and he asked could he come in and play a phonograph, and I told him no, so he stayed out on the porch and played about two minutes, and turned it off, and he [fol. 21] asked if I didn't want to buy a book called "Religion", the woman had it in her hands, and she pulled it out and I bought it, and then he gave me a pamphlet and said he had some other books that he was selling, I don't remember any of the names, but I didn't buy them.

Q. How much did you pay for the book?

A. A quarter.

(Book, marked Exhibit 2.)

Q. Handing you State's Exhibit 2 for identification, I will ask you to examine that, please. State whether or not that is the book you bought from this man?

A. It is.

Q. Did you buy anything else?

A. No, sir.

Q. Did he leave any other literature with you?

A. He played the phonograph, and left a little pamphlet.

Mr. Reed: We offer State's Exhibit 2.

Mr. Clark: No objection.

The Court: It may be admitted.

(Pamphlet marked St. Ex. 3.)

Q. Handing you State's Exhibit 3 for identification, I will ask you to examine that. State whether or not that is the pamphlet he left?

[fol. 22] A. It is.

Mr. Reed: We offer it in evidence.

Mr. Clark: No objection.

The Court: It may be admitted.

Q. Was anything said about donations or contributions by this man or that lady?

A. No, sir.

Q. Who told you the price of the book?

A. He did.

Q. What did he say it was?

A. A quarter.

Q. It cost you a quarter?
A. Yes, sir.

Mr. Reed: You may cross-examine.

Cross-examination.

By Mr. Clark:

Q. Miss Richerson, what time of day did you say it was?
A. It was about 9:30 I believe, in the morning.
Q. Did he introduce himself in any way, tell you who he was, what he was doing, when you first came to the door?
A. No, he just asked to play the phonograph.
Q. Did he play the phonograph then?
A. Yes.
Q. Didn't he show you a card or a little open-faced pack-
[fol. 23] age?

("Testimonial" card of defendant marked Defendant's Exhibit A.)

Q. (continued). Examine defendant's exhibit A for identification.
A. He didn't show me that.
Q. You are positive he didn't show you this or anything like it?
A. No, he didn't show me that.
Q. He was on your porch when you went to the door?
A. Yes.
Q. And the lady was with him?
A. Yes.
Q. What was the first thing he said to you?
A. He said could be play the phonograph.
Q. Did he say "May I play the phonograph"?
A. He said—he had it there, and he asked if he could play it.
Q. Did he tell you the nature of the recording?
A. No, he did not.
Q. He just asked you if he could play it?
A. Yes.
Q. Didn't you think it a little unusual for anyone you never saw before to come up on your porch and play?
A. Yes, I did.
[fol. 24] Q. Didn't he tell you he was preaching the gospel?

A. Yes, but not at first.

Q. When did he tell you that?

A. During the course of the conversation.

Q. Was it after he played the phonograph?

A. Yes.

Q. And before he offered to sell that book to you?

A. Well, I don't remember when it was.

Q. Sometime during the conversation he told you he was an ordained minister preaching the gospel?

A. Yes, he said he was preaching.

Q. Did he quote you any scripture?

A. I don't believe he did. He did when he went to sell me the book.

Q. Some Bible quotations from the book?

A. I believe he did.

Q. Did he read you anything from this pamphlet that he gave you?

A. No, sir.

Q. But he did read you some Bible quotations during the conversation?

A. He quoted some, he didn't read them.

Q. As a matter of fact, who have you discussed this case with since this occurrence?

A. Just Mr. Reed.

[fol. 25] Q. Is he the only person you have discussed it with?

A. Yes, he is.

Q. You haven't talked to your father about it?

A. No, sir.

Q. You never did?

A. He and mother were at the trial.

Q. In your family at home have you not had any private discussions of it?

A. No.

Q. When your father got home and found you had a book there was no discussion?

A. He never knew I had it.

Q. He found it out before the trial at Casa Grande and you had some talk about it?

A. The only time he knew was after Mr. Reed asked me to come and he knew about the case.

Q. How did Mr. Reed find out you bought a book? Did you go to him and volunteer the information?

A. I don't remember.

Q. Did he come to you?

A. He came to the house.

Q. He said he knew you bought a book and wanted you to testify?

A. Yes.

[fol. 26] Q. No one told you how to testify?

A. No, sir.

Q. As a matter of fact, Miss Richerson, when Mr. Jobin walked up on your porch he presented that testimonial card marked Defendant's exhibit A, and told you he was preaching the good news of God's Kingdom, did he not?

Mr. Reed: Objected to as asked and answered.

The Court: Overruled.

A. No, he didn't show me that card at all.

Q. The first words he told you were his name, didn't he?

A. I don't believe so, I don't remember it all.

Q. You don't remember all that went on there, it has been so long ago?

A. Yes, it has been.

Q. And the next thing he told you after playing the phonograph was to show you this book and ask you if you wouldn't like to have one.

A. No, he asked me to buy one.

Q. Can you give me his exact words?

A. No, sir.

Q. Didn't he ask if you wanted to make a contribution to print more of these books?

A. No, he didn't ask me for a donation.

[fol. 27] Q. You haven't discussed the matter of the donation?

A. No, sir.

Q. But you are not sure of the rest of the conversation that you and I have just gone over?

A. I am sure about all between the very first one about the phonograph.

Q. You are sure he told you something about religion or Christianity?

A. He asked if he could play the phonograph, and I told him he could and he did, and I didn't understand anything about it until after he played the phonograph and

then he said a few words about it and asked if I didn't want to buy the book.

Mr. Clark: That's all.

By the Court:

Q. Did I understand you on direct examination to say that he asked permission to come into the house first?

A. Yes, sir.

Q. And you refused?

A. Yes, sir.

Q. He didn't persist and try to force his way into your home?

A. No, sir.

[fol. 28] Q. What was your reply when he asked to play the phonograph, did you object?

A. No, sir, I didn't object.

Q. That was done with your approval, or at least you did not object.

A. No, I didn't object.

Q. This little pamphlet, he gave you that?

A. Yes, sir.

Q. And that book, you purchased for the sum of 25 cents?

A. Yes, sir.

Q. Was his conduct offensive to you, the manner in which he conducted himself at the time?

A. No, sir, it was not.

The Court: That's all.

No further questions.

Witness excused.

Mrs. Hazel Irene Bonebrake, a witness for the State, heretofore duly sworn, testified as follows:

Examination by Mr. Reed:

Q. Your name, please.

A. Mrs. Hazel Irene Bonebrake.

Q. You live in Casa Grande?

A. Yes, sir.

[fol. 29] Q. How long have you lived at your present place of residence?

A. Two years.

Q. Will you look at the defendant, please? Have you ever seen him before?

A. Yes.

Q. When did you first see him?

A. At my front door in Casa Grande?

Q. What, about, was that?

A. The first part of August.

Q. Of this year?

A. Yes.

Q. He came to your home there in Casa Grande?

A. Yes.

Q. Go ahead and relate in your own words just what happened there at that time?

A. It was on Thursday morning and I was busy, and him and a lady came to the door and wanted to know if they could talk to me, and I told them I was very busy, and he said he had a phonograph and it wouldn't take long to play it, to play a record, and I told them I didn't want to buy anything, that I was very busy, but I let them in a few minutes and listened to the record, and after that they got up, and the lady had a bag and took out a book, and I said [fol. 30] "No, I don't want to buy anything, I told you that before you came in, and then he spoke up and told me the pamphlets were three for a dime, and I told him I didn't want to buy them, and then he had some little sheets, and asked if he left them, would I read them, and I told him he had better take them on, that somebody else would read them before I would, and so they went on.

Q. You didn't give them any money?

A. No, sir.

Q. And you received no books?

A. I received no book.

Q. He said the pamphlets were three for a dime?

A. Yes, sir.

Q. Did he give you any of those?

A. I don't know if those were what he was selling, but he left some literature there.

Q. Was anything mentioned about donations or contributions?

A. No, sir.

Mr. Reed: You may cross-examine.

Cross-examination.

By Mr. Clark:

Q. Mrs. Bonebrake, when Mr. Jobin first came to your door, what was the first thing he said to you?

[fol. 31] A. Well, I don't know, I couldn't tell you just the first thing, but he wanted to play the record.

Q. Did he tell you what his name was when he first came to the door?

A. He might have, I didn't pay any attention, I wasn't interested to begin with.

Q. You wouldn't say he did not tell his name?

A. No, sir, I would not.

Q. Didn't he tell you what he was doing there at the door?

A. No, he wanted to play his record, but he didn't tell me what it consisted of or anything.

Q. Didn't tell you he was preaching the good news of God's Kingdom before he started?

A. No, sir, there wasn't any religion of any kind mentioned.

Q. Did he tell you he was an ordained minister of the gospel?

A. No, sir.

Q. He wanted to know if you would hear the phonograph record?

A. He wanted me to buy something.

Q. Was that the first thing?

A. No, I told him I didn't want to buy anything when I [fol. 32] first looked at him.

Q. Handing you defendant's exhibit A for identification, have you ever seen that before?

A. No, sir.

Q. Or anything that looked like that?

A. No, sir.

Q. As a matter of fact, wasn't the first thing Mr. Jobin said to you, "My name is Charles Jobin; I am preaching the good news of God's Kingdom;" and then handed you that card for his identification. That's right, isn't it?

A. No, he did not.

Q. You say then he told you nothing of what he was doing, his work, during the entire conversation?

A. Not until I listened to the phonograph.

Q. Did he tell you after that?

A. Well, then, of course, I knew what he was doing. I knew it was some religious organization.

Q. Didn't he say "I would like to leave some of our literature"?

A. No, the lady took the book out——

Q. Didn't he say that first?

A. No, he didn't.

[fol. 33] Q. The lady didn't wait for him?

A. I said I didn't want to buy it. I said I didn't want anything.

Q. Did you say "I don't have time to read this:"?

A. No.

Q. You didn't give him time to sell anything?

A. He tried to sell the pamphlet after I said I didn't want the book.

Q. And you told him you didn't want to buy them and wouldn't read them.

A. That's right.

Q. Didn't he say: "I will be glad to give them to you if you will read them"?

A. When he got ready to leave, he——

Q. Are you sure he didn't say that?

A. Yes, I am sure he did not.

Q. But he did give you a little piece of paper?

A. Yes, two little sheets, he laid them on the table that was there.

Q. And you said then "You had better take them some place else"?

A. Yes.

Mr. Clark: That's all.

No further questions.

Witness excused.

[fol. 34] CHARLES RICHARDSON, a witness for the State, being first duly sworn, testified as follows:

Examination.

By Mr. Reed:

Q. State your name, please.

A. C. I. Richardson.

Q. Where do you live?
A. In Casa Grande.
Q. How long have you lived there?
A. Since '29.
Q. What business or occupation do you follow?
A. Laundry and dry cleaning.
Q. Were you in that business during the month of August of this year?
A. Yes.
Q. Have you ever seen this defendant sitting here by his counsel, before?
A. Yes.
Q. When did you see him?
A. I saw him, he came over to the laundry during the middle of August one day.
Q. August of this year?
A. Yes.
Q. Go ahead and tell all that happened at that time, in your own words.
A. He came over to the laundry and came in and spoke [fol. 35] to my bookkeeper, I didn't happen to be in the front at the time, and she was busy and she wouldn't talk to him, from what she told me, and went to looking for me, and while they were looking for me, I saw the man up there and saw his brief case and presumed he was a salesman looking for me in connection with the laundry business, so I went up to see what the man wanted, and as soon as I came up, as I remember it, he introduced himself by letting me know he was representing a religious order with the Jehovah Witnesses, and would like to interest me in some of their work. I presumed he had something to sell, so I asked him what he had to sell, as long at it wasn't directly in my line, if I could use it I would buy it and let him go on his way, and he said, "I don't have anything to sell, but I have some books on religion, and if you will donate 25 cents to the cause, you may have one of these books," and I believe at that time he showed me one, or maybe two or three different kinds of books, and so we talked a few minutes or longer, I don't remember just what about, but along in the conversation we were talking about religion, I was kind of interested in [fol. 36] what the man might be doing out on the road that way, and I remember he made the remark concerning religion, I presume other-*sic* than his own, when he was talking about these books, and I asked him how he could

produce them to sell so cheaply, and he said they had a plant of their own, that they were not endeavoring to make a great profit, but were trying to put their religion out, that was the main idea, and also he made the remark when I told him I would kind of like to donate most of my money to local bodies, if I should choose to do so, and he told me that, in his opinion, they were—what was the word he used —rackets; that all the regular religions as a general rule was a racket, and I took a little offense at that because I am in favor of religions as a whole. I think it is a very good thing, so I told him I didn't exactly agree with his views in that respect, that I thought religions as a whole a good thing to uphold, and we talked about thoughts and things in life and we let it go at that, and he went ahead and showed me his other books to see if I wanted any, and I picked out [fol. 37] one called "Religion" or "Religions" and when I took this book, he said, "Now these other books are good, and for 75 cents you can have three of them" and I told him, No, I didn't want but the one, "I will take it", so he said, "Here, I have another pamphlet that I would like to have you take. It won't cost you anything but it is something no doubt very interesting" or words to that effect, so I took that with the book and gave him the money and he went on west towards Mr. Sells' place.

(Book "Religion" marked State's Exhibit 4.)

Q. Handing you State's exhibit 4 for identification. I ask you to examine that. Is that the book you bought?

A. That one or one identical with it. It is the same color and the same appearance.

Mr. Reed: We offer it in evidence.
Mr. Clark: No objection.
The Court: It may be admitted.

(Pamphlet marked State's Ex. 5.)

Mr. Reed: We offer this in evidence.
Mr. Clark: No objection.
The Court: It may be admitted.

Q. Will you examine State's Ex. 5.

[fol. 38] A. I wouldn't know anything about the inside, because before I looked any further than the cover, Mr. Baker took it from me.

Q. Well, look at the cover.

A. This is the book or pamphlet the same as I had.

Mr. Reed: We offer it in evidence.

Mr. Clark: No objection.

The Court: It has already been admitted.

Q. And you gave him 25 cents?

A. Yes.

Q. And he said for 75 cents you could have three of the books?

A. That's correct.

Mr. Reed: You may cross examine.

Cross-examination.

By Mr. Clark:

Q. Mr. Richardson, you stated under direct examination that the defendant condemned religion. Is that right, or did he state various religious sects that he did not like?

A. No, he said they were rackets, they were all a racket.

Q. Did he tell you what he thought the difference was between religion and creeds?

A. Not that I remember of.

Q. He might have, isn't that so?

[fol. 39] A. I didn't have any occasion to remember it until I was called as a witness, and I wouldn't remember anything about it until Mr. Baker came over and brought that book over.

Q. Then you probably don't remember the conversation in great detail.

A. Parts of it that I told you was what I remembered.

Q. He might have said other things?

A. Unless they were recalled to me, I wouldn't remember them.

Q. He told you the contributions went to publish more of this same kind of literature.

A. I might have inferred that, but he didn't say that.

Q. You wouldn't say he did or did not, would you?

A. No, I would not.

Mr. Clark: That's all, your Honor.

By the Court:

Q. Let me get this straight. Did you understand that you bought this book for 25 cents, or were asked for a donation and he gave you the book?

A. After we talked for a while, he had more than one book, different kinds, all about the same size but with different headings, and he asked me what book I would choose, and I [fol. 40] picked out this one here, and he told me at that time that for 75 cents I could have three of the books, and I told him, no, I didn't want but the one. I said that I would buy one, so I took the book and gave him the money.

Q. Was that transaction as you understood it a purchase or were you making a donation to the cause?

A. I didn't decide that, but I would have.

Q. I am just asking your understanding.

A. The understanding was if I gave him 25 cents I would get a book, and I got the book, and gave him 25 cents and I understood the book was mine after I gave him the 25 cents.

The Court: That's all. Any further questions?

Mr. Reed and Mr. Clark: No questions.

Witness excused.

Guy J. Baker, a witness for the State, heretofore sworn, testified as follows:

Examination.

By Mr. Reed:

Q. Your name is Guy J. Baker?

A. Yes, sir.

Q. What official position do you hold in the city of Casa [fol. 41] Grande?

A. Chief of Police and City Marshal.

Q. How long have you held that position?

A. Seven years and three months.

Q. Are you acquainted with the defendant?

A. I met him last August.

Q. When did you first meet him or see him?

A. August 15th, 1940.

Q. Where?

A. At the home of Ham Stevens.

Q. Was anyone else there at that time?

A. Mr. Stevens was there, and a party with me, by the name of George Branscomb.

Q. What happened there and took place?

A. About ten minutes before I went there Mr. Bonebrake and Mr. Bob Hendricks looked me up down town, and they told me——

Mr. Clark: Object to what they told him.

Q. Don't tell what they said.

A. They reported a party was selling books——

Mr. Clark: Object to that answer, and move that it be stricken:

The Court: Motion *to* denied.

A. And requested that I go and investigate. I took Mr. Branscomb with me and went up and located defendant, [fol. 42] Charles Jobin, and I told him I would like to have a conversation with him. I asked him first what he was doing, and he said he was selling religious tracts and books and spreading the gospel of the kingdom. I told the defendant that according to the city ordinances he would have first to get a license before he could sell any books or pamphlets. He told me "I recognize no authority but Jehovah". I said, "I am sorry, Mr. Jobin, but you can't sell books in town without a license. However, if you would like to leave now and not sell any more, we will forget all about it." He said "The only way I will stop selling books is to be arrested and put in jail," which was immediately done.

Mr. Reed: You may cross-examine.

Cross-examination.

By Mr. Clark:

Q. Now, Mr. Baker, handing you defendant's Exhibit A for identification, did you ever see that before?

A. I saw it down in the courtroom in Casa Grande.

Q. That was the first time you saw it?

A. He showed me one that day.

Q. And told you that was his credentials and identified him?

[fol. 43] A. Partially identified him.

Q. And that was the first thing he showed you.

A. No, sir, it was not.

Q. You have been chief of police seven and one half years?

A. Seven years and two or three months.

Q. Before that you were City Fire Marshal?

A. No, sir.

Q. What did you do before that?

A. A grease-hound, running a truck and running a garage.

Q. Is that the only city or county position you ever held?

A. Un-huh.

Q. You have to arrest somebody sometime to keep your job?

A. I beg your pardon.

Q. So the City Fathers will be satisfied with your work.

A. No, sir, they are much more satisfied when I don't have to make an arrest.

Q. And Mr. Baker, the first thing Jobin told you, you say, is that he said I am selling religious books?

A. That's right.

Q. Isn't it a fact that the first thing he said was, "'I am [fol. 44] preaching the gospel''?

A. As I testified before, I asked him what he was doing, and his first reply was, "I am selling religious books and preaching the gospel of the kingdom."

Q. That was after you told him you would like to have a little conversation with him?

A. That's right.

Q. Didn't you just say a little while ago "I located Charles Jobin and told him I would like to have a little conversation with you" and he answered, and said he was selling books and pamphlets and was preaching the gospel of the kingdom?

A. Sure, that's what he told me.

Mr. Clark: That's all.

Mr. Reed: That's all. No just a minute.

Re-direct examination.

By Mr. Reed:

Q. State whether or not the defendant Charles Jobin had an established place of business in the city of Casa Grande any time this year?

A. No, to my knowledge.

Q. He never had one?

A. No, sir.

Q. The place you saw him was in the city limits?

A. Yes, that's right.

[fol. 45] Q. Do you know where Connie Richerson lives?
A. Yes.
Q. Is that in the city limits?
A. It is.
Q. And you know where Mrs. Bonebrake lives?
A. Yes. She lives inside the city limits.
Q. And where is Mr. Richardson's laundry?
A. Inside the city limits.

Mr. Reed: That's all.
Mr. Clark: No further questions.
Mr. Reed: The State rests.

(Recess taken, 10:50 a. m. until 11:05 a. m. During which time the jury, after being duly admonished by the court, were permitted to retire. At 11:05 a. m., all present as before, including the jury, the trial is resumed.)

CHARLES JOBIN the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Clark:

Q. Your name is Charles Jobin and you are the defendant in this case?
A. Yes.
Q. What is your occupation, profession or calling?
A. Ordained minister of the gospel and commanded by [fol. 46] Jehovah God to preach the good news as commanded by Him and his work.
Q. On the 15th of August, 1940, where were you?
A. In the city of Casa Grande.
Q. What were you doing there?
A. Publishing the good news as commanded by the Lord.
Q. What methods did you use?
A. With phonograph which I did carry that about, and play a short recording Bible truth to the people, and also by word of mouth, and also books from which was witnessed further the truth of the Bible.
Q. By whom are the books printed?
A. By the Watchtower Bible and Truth Society, which is a charitable organization duly commissioned by the Lord to preach and publish the good news.

Q. Are you a member of that society?
A. I represent the Watchtower Bible and Truth Society.
Q. You say you had a phonograph that morning?
A. Very true.
Q, What became of it?
A. The phonograph was taken away from me when Mr. Baker arrest me he take away my phonograph and my book [fol. 47] bag and also my testimony card.
Q. Have you seen that phonograph or book bag from that day to this?
A. I saw this morning Mr. Baker had in his hand when he come up here.
Q. But——

Mr. Clark: May it please the Court, I ask the State to produce them.
The Court: They may be produced.

Q. Handing you defendant's exhibit A, have you seen that before?
A. This is my testimony card.
Q. By whom was that given to you?
A. The testimony card is sent to us by the Society to identify every one of us as representing the same.

Mr. Clark: We offer it in evidence.
Mr. Reed: No objection.
The Court: It may be admitted.

(Phonograph brought in and marked Defendant's Exhibit B.)

Q. Handing you defendant's exhibit B for identification, will you examine that?
A. Kindly can I ask the Court if I can open it?

The Court: Certainly, but don't play it here.

[fol. 48] A. This is the phonograph I was using that morning of my arrest.
Q. Is the record the same one you were playing that morning?
A. It is the same and I would kindly ask the Court make it clear grant me the favor to play it right now here.
Q. Not at this time. The record is the same one you played for Connie Richerson?
A. Yes.

Q. And to Mrs. Bonebrake.

A. The same one I was using that morning.

Q. Did you play that to Mr. Richardson?

A. I played it in every home in which they allow me to play it and she allow me to play it.

Q. Did you play it at Mrs. Bonebrake's. That's the name of the party who testified?

A. The names of the party I met so many it would be hard to remember, but if she is the one, surely I played it.

Mr. Clark: We offer it in evidence.

Mr. Reed: No objection.

The Court: It may be admitted.

Mr. Clark: And we will ask the Court to allow this record to be played?

The Court: For what purpose?

[fol. 49] Mr. Clark: For the purpose of proving what this man did. They have testified he played the record for them and we ask a demonstration be made for the purpose of showing what he did.

The Court: What is the attitude of the prosecution?

Mr. Reed: I really think it is purely immaterial, but we have no objection. He is charged with selling books, and what he played doesn't have anything to do with it.

The Court: I can't see what probative value playing it would have. The witnesses for the State have testified the defendant came to their house and played—house or place of business, and that he did, when permitted to do so, play this record, and now the defendant himself admits it. As to the contents of that record, that could have no bearing on the issues here. He is charged, not with playing a phonograph record or any other disturbance of the peace, but of selling books and literature without a license, so that your offer, Mr. Clark, to play the record, will be denied.

Mr. Clark: Yes, your Honor, he is not charged with play-[fol. 50] ing this record, but the playing of it may shed some light on what he was doing. I will withdraw the offer at this time and renew it later.

Q. Do you remember Connie Richerson, have you any independent recollection of her?

A. I do remember the laundry man.

The Court: The question is, whether you remember the young lady, the second witness.

A. Yes, I remember her.

Q. When you called on her, what did you say?

A. I say, I kindly ask her if she would like to hear a recording, which was Bible truth. She said, "I am busy". I said, "This will take only four minutes of your time and will enable something of Jehovah God's righteous kingdom" and she said "Come on in" and then I played the recording.

Q. Then when did you show her these books or pamphlets?

A. In fact, my wife was with me and she is the one, she showed the books to them.

Q. Did you show her this book?

A. My wife did, because we were working, the two together.

Q. What did you tell her with reference to the book and what you were doing?

[fol. 51] A. We used the same testimony books, our testimony is truth and those books, every one, has over a thousand Bible quotations explaining exactly what everyone of us need to know and I told her if she want one book to enable the work, she could have the book on a small contribution of 25 cents, but if people are too poor, it may be left at their home entirely free of charge.

Q. With reference to this pamphlet, Exhibit 5, what did you tell her with reference to that?

A. I tell her that anyone that want to contribute 25 cents for one book, the little pamphlet will be left without. And in case she don't feel like taking a copy of the big book and is too poor, it be left entirely free of charge provided she is willing to read it.

Q. When you called on Mrs. Bonebrake, the other lady who testified here this morning, what did you tell her?

A. We generally use the same introduction every place, because we make it very brief. I told her the recording, if she like to hear, would not cost her a penny.

Q. Did you show her your testimonial card, this one marked Exhibit A for identification?

A. Without a doubt the card was showed to her.

[fol. 52] Q. You heard Mr. Richardson, the laundryman, testify this morning? When you went to his place of business what did you say to him?

A. I call his attention I was representing the Watchtower Bible and Truth Society; that I am one of Jehovah's Witnesses, and for him please read the card carefully which I showed to him, which was my testimony card.

Q. Did you have any conversation about leaving any books or pamphlets with him?

A. I had quite a little talk. I recall very plain he told me himself he was not affiliated with any religious organization. He said I like to contribute, I like to help them along, buf I told him, "This is not a religious organization; this is entirely a Christian organization." I showed him the book; I opened one and let him read the statement inside and I told him if he felt like contributing a quarter to help the work along the book would be left with him.

Q. Now, Mr. Jobin, in Casa Grande have you ever offered to sell any of these books?

A. At no time.

Q. Why did you go from door to door distributing these books and playing this phonograph?

[fol. 53] A. The spirit of the Lord is upon me and the Lord anoint me to preach. To bind the broken-hearted and to proclaim liberty unto the captive. I am consecrated to obey God's will and to set forth his commandments as set forth in the Scripture.

Q. Do you believe that any consequences will be brought on you in case you do not obey the Lord's will?

Mr. Reed: We object to his beliefs.

The Court: Overruled.

A. Yes, in Acts 3; 23; it reads that every soul that will not hearken shall be destroyed from among the people.

Q. Is this your method of worshiping Jehovah God?

A. Because His disciples went from place to place by the Lord Jesus' proclamation and proclaim the good news, so I go from place to place as commanded by the Lord.

Q. How long have you been engaged in this work?

A. Approximately 10 years.

Mr. Clark: You may cross-examine.

Cross-examination.

By Mr. Reed:

Q. When you arrived in Casa Grande to carry out your work you have just testified to, did you go to the city offi-
[fol. 54] cers and make application in accordance with their laws?

A. No, sir.

Q. Why didn't you?

A. Because I was commanded by Jehovah God to preach the good news and the constitution of the Lamb grant me this privilege, and the law of Jehovah God, and also I consider it my duty is that I obey.

Q. You hold that you are not amenable to laws made by the city of Casa Grande?

A. I am obeying the constitution of the Lamb.

Q. Answer my question.

A. I cannot ask for any permit to do a thing Jehovah God commands us to do.

Q. And that includes complying with the local rules and regulations of constituted authority?

A. I will answer this way. I am a witness in this court and I did not break no laws because the constitution guarantees me the right to publish the good news of the kingdom.

Q. But you don't feel that you have to comply with local ordinances before you publish the good news.

A. No.

Q. And that's the reason you refused to take out a license?

[fol. 55] A. I did not refuse to take out a license because I was carrying on the Lord's work faithfully.

Q. But you did refuse when Mr. Baker talked to you.

A. I never, because I will not take any at no time. I never refuse it at no time.

Q. But you won't take any out?

A. That's right.

Q. You say when you called on Connie Richerson, did she ask you into her house?

A. I brought attention to her mind that I had a recording and was going to play it, and she ask me to come in, which I did, and set the phonograph on the table with her permission and then played it to her.

Q. Did you sit down there?

A. I don't think so, I don't remember, because I know the record lasts only four and one half minutes and our time is very precious to call it to as many souls as we can, because our duty is to warn people of approaching disaster.

Q. I will ask you to please answer my questions; this is no time for a sermon. Did your wife sit down?

A. I don't recall.

[fol. 56] Q. How about the girl?

A. I don't recall.

Q. You don't recall—you do recall, however, that she called you in and you set the phonograph on the table?

A. That's what I recall.

Q. You say if people were unable to pay you left them free?

A. Left the pamphlet entirely free of charge and if any people too poor to contribute for the big books and will read it carefully, we will leave it at their home.

Q. Which is the one you left free?

A. The pamphlets if they are willing to read it. If willing to read it, the big book only in the case they are too poor and cannot contribute for it, and will study it carefully we also leave that.

Q. Did you leave any of these big books without anybody paying you 25 cents?

A. I don't remember, but I have left them in Pinal County.

Q. As a matter of fact, you didn't leave any in Casa Grande unless you got the 25 cents.

A. I don't recall, but I left a good many pamphlets.

[fol. 57] Q. This is this little pamphlet?

A. Yes.

Mr. Reed: That's all.

Re-direct examination.

By Mr. Clark:

Q. The money you received from contributions for these books and pamphlets—what becomes of it?

Mr. Reed: Objected to, it makes no difference.

The Court: What is the purpose of this?

Mr. Clark: If this is religious, and the contribution is not kept for himself, he is not in business peddling.

Mr. Reed: If the Court would like to hear some law on that proposition, I have it.

Mr. Clark: Question withdrawn.

Q. How many books and pamphlets have you given away free in the last six months?

A. It would be rather hard to answer, but we are sure we give hundreds away.

Q. How many approximately here in Pinal County?

A. I have not been in Pinal County for six months but I have been in this county and also in Phoenix since the last three months, but I know for a certainty we have given over [fol. 58] 200 booklets away since that time without receiving any contribution.

Mr. Clark: That's all.

Recross-examination.

By Mr. Reed:

Q. By booklets you mean these pamphlets?

A. Yes, and also quite a few big books, people too poor and who show a good spirit, we leave it at their home.

Q. Do you remember any of those people?

A. Yes.

Q. Who are they?

A. We don't take the name down, but if it please the court to locate their place, I would be glad to do so. We don't ask the name of people, we are preaching the good news and it is our duty to go from place to place and warn people of the approaching disaster.

Q. Can you tell me where any one lives where you have left at least one big book without charge?

A. Yes, I could show you the place.

Q. Where is it?

A. Right in Coolidge.

Q. Where?

A. In Coolidge.

Q. Where in Coolidge?

[fol. 59] A. I know I left one there, I think a party told me — was sick for six months, he has quite a large family.

Q. Answer the question.

A. I am just coming down to it. I don't recall the name of the street, I can take you there and be glad to and then we can get his name.

Q. You knew your trial was coming up since the 22nd day of August, did you not?

A. I know the case was pending, and going to be appealed, but I did not know anything of it, the date, until two days ago.

Q. You have made absolutely no effort to locate any person to whom you have given one of these books?

A. I could locate others I have given away before this.

Q. You haven't done the preparing for this trial?
A. Emphatically no.

Mr. Reed. That's all.
Mr. Clark: That's all.

Witness excused.

Mr. Clark: We rest.
Mr. Reed: No rebuttal, your Honor.

(Jury admonished, and excused until 1:30 p. m. or subject to call of the court.)

[fol. 60] MOTION FOR DIRECTED VERDICT

Mr. Clark: (After jury retires). May it please the court, at this time the defendant moves the court to direct the jury to return a verdict of not guilty upon the grounds that the ordinance upon which this action is based is void. And, second, that the ordinance is unconstitutional in contravention with the 14th amendment to the Constitution of the United States; and, third, it does not apply to the defendant.

(Whereupon the matter was argued to the court by both counsel, and at 3 o'clock p. m., in open court, all parties being present as before, including the jury, the trial was resumed and the following proceedings were had:)

The Court: Let the record show all jurors present. Gentlemen, we will proceed. The motion made by the defendant before the noon recess is denied. I believe you stated, Mr. Reed, there was no rebuttal?

Mr. Reed: That's correct, your honor.

The Court: Then the case is completed as far as the evidence is concerned. You may proceed to the argument.

Mr. Reed: The State waives opening argument.

(Whereupon Mr. Clark argued and was answered by [fol. 61] Mr. Reed.)

The Court: May I ask counsel if you have any special instructions that you desire to submit to the Court.

Mr. Reed: We have none, your Honor.

Mr. Clark: The defendant has none, your Honor.

The Court: Very well. Gentlemen of the jury, you have heard the evidence and the argument of counsel and it now becomes the duty of the court to instruct you as to the law governing the case. I wish you would follow these instructions carefully. The information, or I should say, the amended complaint in this case, on which the defendant is now on trial, reads as follows: I will re-read the amended complaint. You will keep in mind that this case is here on appeal from police court in the city of Casa Grande. No information was filed; that is not necessary, as it is under trial from a complaint in the police court, and the amended complaint charges the defendant:

(* * * reads amended complaint on file.)

Now the ordinance in question under which this defendant is being prosecuted for an alleged violation thereof, reads, in part, as

[fol. 62] (* * * reads from ordinance introduced in evidence * * *)

Under Section 12 of the ordinance it defines there what constitutes a transient merchant, peddler and vender, which I have just read you.

So if you gentlemen will keep in mind throughout your consideration of this case that this defendant is accused of offering for sale and selling and soliciting the sale of these pamphlets, books and publications, without first having secured a license from the City of Casa Grande. In other words, gentlemen, this ordinance, as amended, is for an occupational tax, designed primarily for revenue purposes.

The information or complaint in any case is a mere formal accusation, and is not to be regarded as any evidence of the defendant's guilt.

The Court has instruc*g*ed you before you can find him guilty, you must find that he is guilty as charged beyond a reasonable doubt.

A reasonable doubt is such a doubt as you may entertain as reasonable men after a thorough consideration of the evidence. It is not an imaginary or capricious doubt, but must be a doubt entertained by you as reasonable and prudent men and based or arising from the evidence or the want

[fol. 63] of evidence. If you find such a doubt exists in your minds after all the evidence is before you, then it is your duty to resolve that doubt in favor of the defendant and acquit him. It is not a mere conjecture or surmise, but a serious and substantial and well-founded doubt arising from the evidence or want of evidence, which has reason for its basis. If you feel uncertain of the defendant's guilt and believe you are acting in a reasonable manner and as a reasonable man in a like situation would act, that is a reasonable doubt to which the defendant is entitled to have the benefit.

You, gentlemen of the jury, are made by law the sole judges of the evidence in this case. You are also the sole judges of the credibility of the witnesses in the case. In determining the credibility of the witness or witnesses you have a right to consider their manner and demeanor on the stand, their means of knowledge of the things about which they have testified, their motive or interest in the case, if such is shown, the probability or improbability of their several statements considered in connection with the other evidence in the case.

[fol. 64] If you believe that any witness has wilfully sworn falsely in the case, you have the right to wholly disregard his testimony, except insofar as it may be corroborated by other evidence—by other credible evidence in the case which you believe to be true.

The defendant has offered himself as a witness in his own behalf. He has that right and you should consider his testimony the same as any other witness in the case, weighing and judging his credibility the same as that of any other witness in the case.

In every crime or public offense, there must exist not only the act committed, but also criminal intent, and this intent may be proven by the circumstances connected with the offense and need not be proven by direct and positive testimony. The actual consequences and the natural consequences of an act in a person of sound mind are presumed to be intended. Intent may be inferred from the evidence and the facts proved to your satisfaction and beyond a reasonable doubt if its existence, as the term reasonable doubt has been defined to you in these instructions.

In order to convict the defendant, it is incumbent upon [fol. 65] the State to convince you beyond a reasonable

doubt of the truth of every material allegation of the information, or in this case, the amended complaint under which the defendant is charged. Nothing is to be presumed or taken by implication. The law raises no presumption against the defendant, and he is presumed to be innocent until he is proven guilty beyond a reasonable doubt, as I have already defined that term to you.

Now, gentlemen, the nature of this offense is such that the court feels he should instruct you a little more fully with reference to the law governing the matter of free speech and freedom of the press. "The court instructs you as a matter of law that this defendant had a perfect right in the city of Casa Grande or any other place in the State of Arizona to, as long as he did not disturb the peace or trespass, give his views on religious matters. He had a perfect right to distribute free any pamphlets, books or literature without obtaining from the city of Casa Grande a permit or license to distribute them. The court wants to remind you that in this matter the defendant is accused of having sold these pamphlets, books, etc., without procuring a license [fol. 66] or permit so to do. Now if you find from the evidence that he did not sell these books or pamphlets, you should promptly acquit him. On the other hand, if you find he did sell these books and pamphlets without having procured a license so to do, then you should find the defendant guilty."

The court will submit to you two forms of verdict. The first, omitting the title of court and cause, reads as follows:

"We, the jury duly empaneled and sworn in the above entitled cause, upon our oaths do find the defendant, Charles Jobin, not guilty."

The other,

"We, the jury duly empaneled and sworn in the above entitled cause, upon our oaths do find the defendant, Charles Jobin, guilty as charged in the complaint."

Now, gentlemen, when you retire to the jury room for the consideration of your verdict, you will first appoint one of your number as foreman. Your verdict in this case as in all criminal cases must be unanimous, and when you arrive at a verdict, have your foreman sign it and return it into open court, where it will be submitted. You will be placed in charge of the bailiff, of course, and kept together.

(Thereupon, at 3:25 p. m. the jury retired to deliberate [fol. 67] upon their verdict, and at 4:00 p. m. returned into open court, all being present the following verdict, omitting title of court and cause:)

The following proceedings were had:

The Court: Have you agreed upon a verdict Gentlemen?
Foreman: We have, your Honor.
The Court: You are the foreman?
Foreman: I am.
The Court: Will you state whether you find the defendant guilty or not.
Foreman: We find the defendant guilty.
The Court: Do you gentlemen (counsel) desire to poll the jury?
Mr. Clark: No, your Honor.
The Court: Mr. Clerk, you may file and record the verdict. Gentlemen of the jury, thanks for your consideration of this case. You are released until tomorrow morning at 9 o'clock. Now, Mr. Clark, you indicated you wanted the defendant to give bond?
Mr. Clark: Yes, I do, your Honor. I have to be in Tucson tomorrow. Would it be possible for him to be released in my custody.
The Court: Where is his address.
The Defendant: In Coolidge.
[fol. 68] Mr. Clark: I don't think he would leave, if there is no objection to it.
The Court: I think it could be done. Mr. Jobin, in——
Mr. Clark: Just a minute, your Honor. (Confers with defendant.) I think the Court could impose sentence at this time. We are ready.
The Court: Very well, stand up, Mr. Jobin. Mr. Jobin, in this case you have been charged with a misdemeanor of selling books and pamphlets without procuring a license so to do, from the city of Casa Grande. A jury having returned a verdict against you, and you having announced ready for sentence, have you anything to say or cause to show the Court why sentence should not now be passed?

(Defendant: No answer.)

Mr. Clark: Nothing, your honor.

JUDGMENT AND SENTENCE

The Court: Very well, it is the judgment of this court that you are guilty, and as a punishment, the Court fines you the sum of $50.00, and if the same is not paid, it shall be served out at the rate of $1.00 per day. In other words, 50 days in jail or payment of a $50.00 fine. The court will permit you to go in the custody of your attorney until such [fol. 69] time as your notice of appeal and bond can be procured. In the meantime I will fix the appeal bond in the sum of $300.00.

(4:05 p. m.)

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 70] IN SUPERIOR COURT OF PINAL COUNTY

ORDER—November 15, 1940

In the Matter of conferring jurisdiction:

It is ordered that Hon. Levi S. Udall, Judge of the Superior Court of Apache County, Arizona, be and he hereby is given general jurisdiction in this court on November 15th and 16th, 1940, in any and all matters regularly coming before said court for consideration, trial or determination, and that said jurisdiction continue until all of such matters are fully and finally adjudicated and determined.

E. W. McFarland, Judge.

IN SUPERIOR COURT OF PINAL COUNTY

Present: Hon. Levi S. Udall, Judge, presiding.

No. 1783. 9:30 A. M.

STATE OF ARIZONA

vs.

CHARLES JOBIN

Minute Entries of Trial

This cause came on for trial at this time, the State appearing by Chas. H. Reed, Casa Grande City Attorney, and the defendant appearing in person and by counsel, Charlie W. Clark, Esq., and the following jurors are called in the box, 18 in number: Donald Moore, Chas. R. Perkins, F. E. Foster, Louis Cathemer, Sam Taylor, E. S. Allen, Tolbert Pruett, John L. Sims, Chas. H. Treadway, John A. Foreman, J. F. Aldrich, R. J. Edwards, Ernest Ramirez, Henry V. Johnson, H. G. Hart, C. T. Wood, Elmer Mathews, Wesley Heiman, and are duly sworn and examined in open court, and found to be qualified, and the list is given to counsel to exercise their peremptory challenges;

This being an appeal from a misdemeanor in the lower court, and it appearing that the defendant has not been arraigned in this court, it is stipulated in open court by all parties that arraignment may be had at this time, and the defendant, being formally arraigned in open court, for a plea says that he is not guilty of the charge contained in the amended complaint, which plea is received and entered, and the trial proceeds.

[fol. 71] The parties now having exercised their peremptory challenges, the first 12 names on the list remaining unchallenged, viz: Donald Moore, F. E. Foster, Louis Cathemer, E. S. Allen, Tolbert Pruett, John L. Sims, John A. Foreman, R. J. Edwards, Henry V. Johnson, H. G. Hart, C. T. Wood, Elmer Mathews, are selected as the jury to try the cause, and are duly sworn as such. Opening statement is made by Chas. H. Reed, and the following witnesses were sworn and placed under the rule: For the State, Guy Baker, Al Hoffman, Chas. Richardson, Connie Richardson and Mrs. Hazel Irene Bonebrake; and the defendant, Chas. Jobin, and the trial proceeds. Al

Hoffman, Connie Richardson, Mrs. Hazel Bonebrake, Chas. Richardson and Guy Baker testify for the State in the order named. During the testimony the following State's exhibits were introduced and admitted in evidence:

No. 1, Certified copy of Casa Grande City Ordinance No. 101;

No. 2, Book "Religion" sold to Connie Richerson;

No. 3, Pamphlet, "Judge Rutherford Uncovers Fifth Column";

No. 4, Book "Religion" sold to Chas. O. Richardson;

No. 5, Pamphlet, same as Ex. 3.

Defendant's Ex. A, "To Whom it May Concern", defendant's testimonial card.

Defendant's Exhibit B, Phonograph and record.

Charles Jobin testified in his own behalf and both sides rested. After argument of counsel and instructions of the court, Counsel for Defendant moves the court for a directed verdict in favor of the defendant, which motion was denied by the court, and now, the jury retired in charge of sworn bailiff to deliberate, and thereafter return into open court the following verdict (Omitting title of court and cause):

VERDICT

"We, the Jury duly empaneled and sworn in the above entitled cause, do find the defendant, Charles Jobin, guilty as charged in the complaint.

John A. Foreman, Foreman."

[fols. 72-93] And if is ordered that the verdict be filed and recorded.

JUDGMENT AND SENTENCE

The defendant, by counsel, in open court announcing that he is now ready for sentence, and being asked if he has any cause to show why judgment and sentence should not now be pronounced, and no sufficient or any cause being shown or appearing to the court, It is the Judgment of the court that you, Charles Jobin, are guilty as charged, and as Sentence of the court that you pay a fine in the sum of $50.00, and if said fine is not paid, that you be confined in the County Jail of Pinal County, Arizona, for one day for each dollar of said fine, if not paid.

NOTICE OF APPEAL

Thereupon, the defendant in open court gives notice of appeal to the Supreme Court of the State of Arizona, and asks that bond on appeal be fixed, and the court thereupon fixes the amount of appeal bond to be given by said defendant at the sum of $300.00 to be approved as to form and sufficiency by the Clerk of this court, and that, pending the giving of said bond, the defendant is released in the custody of his attorney.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 94] IN SUPREME COURT OF ARIZONA

No. 904

THE STATE OF ARIZONA, Appellee,

vs.

CHARLES JOBIN, Appellant

Appeal from Superior Court of Pinal County

Honorable Levi S. Udall, Judge

Judgment affirmed.

Joe Conway, Attorney General, Albert M. Garcia, his assistant, of Phoenix; Chas. H. Reed, of counsel, of Coolidge, for Appellee.

Charlie W. Clark, of Phoenix, Attorney for Appellant.

OPINION—Filed October 20, 1941

LOCKWOOD, C. J.:

This is an appeal by Charles Jobin, called defendant, from a judgment pronounced on him, after a verdict by a jury in the superior court of Pinal County finding him guilty of a violation of ordinance number 101, of the City of Casa Grande. The provisions of the ordinance which defendant was found guilty of violating read as follows:

"Section 1. It shall be unlawful for any person • • • to carry on any trade, calling, profession, occupation or business in this ordinance specified, without first having

procured a license from the City of Casa Grande, so to do, or complying with any and all regulations of such trade, profession, occupation or business mentioned in this ordinance * * * and each day or fractional part of a day that any trade, business, profession or occupation in this ordinance specified is conducted or carried on without such license shall be a misdemeanor. * * *."

"Section 2. As used in this ordinance, the term 'peddler' shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande * * * All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of twenty-five dollars ($25.00) in advance".

[fol. 95] It was enacted under the provisions of section 16-207, A. C. 1939, which reads so far as material as follows:

"*General powers of common council enumerated.* The common council of such town shall have control of the finances, and of the property of the corporation; and shall likewise have power within the limits of the town:

"20. To license, tax and regulate * * * peddlers * * *."

The ordinance on its face is the ordinary occupational license tax ordinance for the purpose of raising revenue and is, generally speaking, valid. City of Glendale v. Betty, 45 Ariz. 327, 43 Pac. (2d) 206. Nor, indeed, does defendant deny this fact. His contention is that if the ordinance is construed to apply to his actions as they appear in the record, it is unconstitutional and void as being in conflict with the First Amendment to the Constitution of the United States, which reads as follows:

"(Religious and political freedom.) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The facts as shown by the evidence and found by the jury may be stated as follows: Defendant is a regularly ordained minister of the denomination commonly known as Jehovah's Witnesses, and on August 15, 1940, was going

from house to house in the city of Casa Grande preaching the gospel, as he understood it, by means of his spoken word, by playing various religious records on a phonograph, with the approval of the householder, and by distributing printed books, pamphlets and tracts which set forth his views as to the meaning of the Bible. The method of distribution of these printed books, pamphlets and tracts was as follows: He first offered them for sale at various prices ranging from five to twenty-five cents each. If the householder did not desire to purchase any of them he then left a small leaflet summarizing some of the doctrines which he preached. In at least two cases, however, he sold a copy of one of the printed books which he had offered, [fol. 96] for twenty-five cents.

Defendant admitted that he was offering these books and pamphlets for sale regularly in the City of Casa Grande and elsewhere, but stated that in some cases, if the parties did not desire to buy the books but promised to read them carefully, they were given free of charge. He also testified that he was doing this because he believed it was his religious duty to do so. He admitted that not only he had not applied for a license to sell the books in question, under the ordinance above set forth, but that when the city marshall told him that he was violating the ordinance, he insisted that he had a right to do so and refused to purchase a license. It is claimed that he could not be compelled to take out a license as preliminary to selling the books and pamphlets in question because (a) it violated his right of free speech, and (b) his free exercise of religion, as guaranteed him by the First Amendment, supra.

The first question we consider is whether what he was engaged in doing was peddling, for if it was not he has not violated the ordinance. A peddler has been comprehensively defined as a small retail dealer who carries his merchandise with him, traveling from place to place, or from house to house, exhibiting his or his principal's goods for sale and selling them. Collender v. Reardon, 138 App. Div. 738, 123 N. Y. S. 587; Ex parte Hogg, 70 Tex. Cr. 161, 156 S. W. 931. Many other definitions have been given by the cases but they all necessarily include a small retail dealer who carries his merchandise with him and travels from house to house.

It is obvious from the record made that defendant was engaged in business as a peddler, for it is not necessary

in order to constitute one such that it should be his sole or principal business. Hays v. Commonwealth, 107 Ky. 655, 55 S. W. 425; State v. Littlefield, 112 Me. 214, 91 Atl. 945. Nor is it necessary that any considerable number of sales be shown. Commonwealth v. Reid, 175 Mass. 325, 56 N. E. 617; State v. Webber, 214 Mo. 272, 113 S. W. 1054. [fol. 97] In the present case not only were two actual sales shown, but defendant stated it was part of his regular business to sell these books and pamphlets. If the books which he sold were dictionaries, works of travel, fiction, or the like there could be no question but that he was engaged in peddling, for instead of taking orders and delivering the books later, he carried them with him and delivered them immediately upon sale. The question then is whether the fact that the books sold, which admittedly contained various arguments and citations supporting the religious belief which he was engaged in promulgating, and which he believed it to be his religious duty to sell, exempts him from the ordinance by reason of the First Amendment to the Federal Constitution, supra.

So far as the right of free speech is concerned, we think the question is definitely settled by the decisions of the supreme court of the United States in Grosjean v. American Press Co., 297 U. S. 233, 80 L. Ed. 660, and Giragi v. Moore, 48 Ariz. 33, 58 Pac. (2nd) 1249, 49 Ariz. 74, 64 Pac. (2d) 819, 301 U. S. 670, 81 L. Ed. 1334. In the Grosjean case the Louisiana statute imposing a license tax for the privilege of engaging in the business of publishing advertising in a newspaper was held *under the circumstances of the case* to constitute a violation of the First Amendment, supra. The court in discussing the matter said:

"* * * The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all a wholly different question would be presented. It is bad because, *in the light of its history and of its present setting*, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties. * * *" (italics ours).

The State of Arizona has adopted a general sales tax law, and in the case of Giragi v. Moore, supra, it was contended that under the doctrine of the Grosjean case the sales tax law was invalid as applied to newspapers. We

pointed out the difference between the facts and background of the Louisiana and the Arizona sales tax as affecting newspapers and that our tax was obviously a general rev-
[fol. 98] enue law applied to many other occupations besides newspapers and in no manner an attempt to regulate or limit the publication of a newspaper, and held the law constitutional as not violating the freedom of speech as guaranteed by the 14th Amendment. The case was appealed to the supreme court of the United States, and on the authority of the very Grosjean case relied upon by defendant herein the appeal was dismissed as not involving a federal question. We think it is obvious to anyone who will read the cases above cited on this point that the general revenue ordinance of the city of Casa Grande imposing a license on peddlers is not unconstitutional as applied to the defendant because it violates the right of free speech.

But the point most vigorously urged is that it violates the right of the free exercise of religion. Baldly stated, defendant contends that he has the right to peddle and sell for money any books, papers and pamphlets which uphold and inculcate his particular religious belief, without paying the license required of peddlers of all secular books, merely because he believes it to be his religious duty to do so. The particular denomination to which defendant belongs has been before the courts of the various states and the federal government many times in the last few years, because its members believe they have a right, under the claim of free exercise of religion, to do many things which are prohibited by law and to refrain from doing others which are commanded by law, because their conscience does not approve of the law. We have been cited to a number of cases where this denomination was involved. Among those is the case of Lovell v. Griffin, 303 U. S. 444, 82 L. Ed. 949. The ordinance in that case, however, prohibited the distribution of literature of any kind at any time, at any place and in any manner, free or otherwise, without a permit from the city manager, and gave the manager discretion in the issuance of the permit. The court held, and we think very properly so, that the ordinance was void as striking at the
[fol. 99] freedom of the press and free speech. In the present case the dissimilarity of the two ordinances is obvious. The court instructed the jury as follows:

"* * * The court instructs you as a matter of law that this defendant had a perfect right in the city of Casa

Grande or any other place in the State of Arizona to, as long as he did not disturb the peace or trespass, give his views on religious matters. He had a perfect right to distribute free any pamphlets, books or literature without obtaining from the city of Casa Grande a permit or license to distribute them. The court wants to remind you that in this matter the defendant is accused of having sold these pamphlets, books, etc., without procuring a license or permit so to do. Now if you find from the evidence that he did not sell these books or pamphlets, you should promptly acquit him. On the other hand, if you find he did sell these books and pamphlets without having procured a license so to do, then you should find the defendant guilty."

and it is obvious therefrom that had defendant, in pursuance of his religious belief, distributed the literature free of charge, the jury, under the instructions of the court, would have acquitted him.

The same question was raised in the case of Cantwell v. Connecticut, 310 U. S. 296, 84 L. Ed. 1213, and the court held the ordinance unconstitutional as applied to Jehovah's Witnesses, stating:

"It will be noted, however, that the Act requires an application to the secretary of the public welfare council of the State; that he is empowered to determine whether the cause is a religious one, and that the issue of a certificate depends upon his affirmative action. If he finds that the cause is not that of religion, to solicit for it becomes a crime. He is not to issue a certificate as a matter of course. His decision to issue or refuse if involves appraisal of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth."

As in Lovell v. Griffin, supra, the ordinance objected to left it to the discretion of a public official as to whether the permit should be granted. The right of free speech, though [fol. 100] not of religious liberty, was also involved in the cases of Schneider v. Irvington, 308 U. S. 147, 84 L. Ed. 155, and Hague v. Com. for Ind. Organization, 307 U. S. 496, 83

L. Ed. 1423. In these cases the court again held the ordinances in question were void on the ground that the permit to be issued involved the discretion of some public officer, and in Schneider v. Irvington, supra, expressly stated:

"* * * The ordinance is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers. * * *

"We are not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires. * * *"

The general question of how far the state may go in adopting rules of conduct which violate the conscience of some individuals is discussed in Hamilton v. University of Cal., 293 U. S. 245, 79 L. Ed. 343. The question involved there was the right of a conscientious objector to refuse to take military training and still insist upon the privilege of attending the state university. The court held that the defendants in that case could not refuse to take the training and at the same time claim the privileges of education. Mr. Justice Cardozo, in a specially concurring opinion, said:

"The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law."

and in this he was joined by Mr. Justice Stone and Mr. Justice Brandeis.

The latest case from the supreme court of the United States in regard to religious liberty is Minersville School Dist. v. Gobitis, 310 U. S. 586, 84 L. Ed. 1375. This case [fol. 101] involved Jehovah's Witnesses. The local rules of the board of education of the public schools required both teachers and pupils to salute the national flag and pledge allegiance thereto as a daily school exercise. The children of Gobitis refused to do this on the ground that it was con-

trary to the religious belief which they had been taught by their parents, and the court said:

"We must decide whether the requirement of participation in such a ceremony, exacted from a child who refuses upon sincere religious grounds, infringes without due process of law the liberty guaranteed by the Fourteenth Amendment."

After discussing the legitimate right of the propagation of belief as held in Cantwell v. Connecticut, supra, the court continued:

"But the manifold character of man's relations may bring his conception of religious duty into conflict with the secular interests of his fellow-men. When does the constitutional guarantee compel exemption from doing what society thinks necessary for the promotion of some great common end, from a penalty for conduct which appears dangerous to the general good? To state the problem is to recall the truth that no single principle can answer all of life's complexities. The right of freedom of religious belief, however dissident and however obnoxious to the cherished beliefs of others—even of a majority—is itself the denial of an absolute. But to affirm that the freedom to follow conscience has itself no limits in the life of a society would deny that very plurality of principles which, as a matter of history, underlies protection of religious toleration. * * *

"* * * The religious liberty which the Constitution protects has never excluded legislation of general scope not directed against doctrinal loyalties of particular sects. Judicial nullification of legislation cannot be justified by attributing to the framers of the Bill of Rights views for which there is no historic warrant. Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities. The necessity for this adjustment has again and again been recognized. In a number of situa- [fol. 192] tions the exertion of political authority has been sustained, while basic considerations of religious freedom have been left inviolate. (Citing cases). In all these cases

the general laws in question, upheld in their application to those who refused obedience from religious conviction, were manifestations of specific powers of government deemed by the legislature essential to secure and maintain that orderly, tranquil, and free society without which religious toleration itself is unattainable. * * *"

It is true that Mr. Justice Stone dissented, but his dissent was apparently based on the theory that requiring an affirmative act of saluting the flag was a compulsory expression of a belief which did not coincide with the true belief of the individual and, indeed, violated his religious conviction and was not of sufficient importance to justify the exercise of the police power of the state. In the present case, defendant is not required to refrain from expressing his religious convictions either orally or by means of printed literature. He is not required to affirm his belief in anything which contradicts these convictions. He is required merely to refrain from *selling* this literature without paying the regular license tax required of all other persons who peddle literature of any nature within the city of Casa Grande. We might well call defendant's attention to the language of the Master regarding the tribute money. Matt. 22: 15-21.

Probably the latest and best statement of the general rule to be applied in cases of this kind is found in City of Manchester v. Leiby, 117 Fed. (2d) 661, in the following language:

"* * * The civil authority can never concede the extreme claim that police regulations of general application not directed against any sect or creed—however widely the regulations may be accepted as being reasonable and proper—are constitutionally inapplicable to persons who sincerely believe the observance of them to be 'an insult to Almighty God.' (Citing case)."

We are told in the Scripture that salvation is free. Rev. 21:6; Rev. 22:17. So long as defendant seeks to inculcate his ideas of the proper pathway of salvation "without money and without price", he will not violate the ordinance in question. If, however, he insists upon the right to commercialize his propaganda, he must comply with the law or [fol. 103] pay the penalty, and this in no way violates the

state or the federal constitution guaranteeing the free exercise of religion.

If defendant still feels that he faces a painful conflict between the call of conscience and man made law, he might read the Apologia and Crito and he would find how one of the wisest of mankind, confronted with a similar choice, resolved the difficulty in a way which has stood the test of the moral judgment of mankind for over two thousand years.

The judgment of the superior court of Pinal County is affirmed.

Alfred C. Lockwood, Chief Justice.

Concurring: A. G. McAlister, Judge. Henry D. Ross, Judge.

[File endorsement omitted.]

[fol. 104] In Supreme Court of Arizona

Judgment—October 20, 1941

This cause having been heretofore submitted and the Court having duly considered same and being now advised in the premises, files its opinion. It is accordingly Ordered that the judgment of the trial court made and entered in said cause be and is hereby Affirmed.

In Supreme Court of Arizona

Order Denying Rehearing, etc.—December 11, 1941

Ordered that appellant's motion for a rehearing be denied; and that his application for Stay of Mandate pending Certiorari Proceedings before the Supreme Court of the United States, be granted.

[fols. 105-140] Petition for rehearing covering 6 pages filed Nov. 4, 1941, omitted from this print. It was denied, and nothing more by order of Dec. 11, 1941.

[fol. 141] UNITED STATES SUPREME COURT, OCTOBER TERM, 1941

CHARLES JOBIN, Appellant,

v.

THE STATE OF ARIZONA, Appellee

Appeal from Arizona Supreme Court

Petition for Appeal, Statement, Assignments of Error and Prayer for Reversal—Filed January 26, 1942

PETITION FOR APPEAL

Considering himself aggrieved by the final decision of the Supreme Court of the State of Arizona, and the judgments of the courts below, in the above entitled cause, the appellant herein, Charles Jobin, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

STATEMENT

This case is one in which the validity of an ordinance of the City of Casa Grande, Arizona, known as ordinance number 101, reading,

"Section 1. It shall be unlawful for any person * * * to carry on any trade, calling, profession, occupation or business in this ordinance specified, without first having procured a license from the City of Casa Grande so to do, or complying with any and all regulations of such trade, profession, occupation or business mentioned in this ordinance * * * and each day or fractional part of a day that any trade, business, profession or occupation in this [fol. 142] ordinance specified is conducted or carried on without such license shall be a misdemeanor. * * *

"Section 2. As used in this ordinance the term 'peddler' shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande * * * All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of twenty-five dollars ($25.00) in advance."

which ordinance was passed and approved by the City of Casa Grande, Arizona, is drawn in question upon the ground that said ordinance is repugnant to the Fourteenth Amendment to the United States Constitution. The Supreme Court of the State of Arizona is the court of last resort in this cause in the State of Arizona in which a decision could be had and the decision of that court is in favor of the validity of said ordinance.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 [U. S. C. Title 28, sec. 354]), appellant respectfully shows this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C., sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The Supreme Court of the State of Arizona, court of last resort in this cause in the State of Arizona, rendered its decision herein on the 20th day of October 1941, which became final when motion for rehearing was overruled on December 11, 1941, and by its said decision affirmed the judgment of the Superior Court of Pinal County, Arizona. The opinion of said Supreme Court of the State of Arizona has not yet been officially reported but is of record unofficially: State of Arizona v. Charles Jobin, 118 P. 2d 97. [fol. 143] That opinion appears in the record at page —.

The order of affirmance by said Supreme Court of the State of Arizona, entered in the office of the Clerk of said Court on October 20, 1941, became a final judgment on December 11, 1941, the date when appellant's motion for rehearing was overruled.

Assignments of Error

Now comes appellant in the above cause and files herewith, together with his petition for appeal, these assignments of error, and says that there are errors committed by the courts below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignments:

First: The Supreme Court of the State of Arizona committed reversible error in failing to hold that the ordinance

in question as construed and applied to appellant is void by reason of the fact that it deprives him of his right of freedom to worship Almighty God as by Him commanded in His written Word and in accordance with appellant's conscience.

Second: The Supreme Court of the State of Arizona committed reversible error in failing to hold that the ordinance in question as construed and applied to appellant is void by reason of the fact that it deprives him of his right of freedom of speech, of press and of assembly, all in violation of Section 1, Fourteenth Amendment to the United States Constitution.

PRAYER FOR REVERSAL

For and on account of the above errors the appellant, Charles Jobin, prays that the said judgment of the Supreme [fols. 144-145] Court of the State of Arizona hereinbefore described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellant and for his costs.

Charlie W. Clark, Hayden C. Covington, Attorneys for Appellant.

[fol. 146] [Stamp:] Filed Jan. 26, 1942. Eugenia Davis, Clerk Supreme Court

UNITED STATES SUPREME COURT, OCTOBER TERM, 1941

CHARLES JOBIN, Appellant,

v.

THE STATE OF ARIZONA, Appellee

Appeal from Arizona Supreme Court

ORDER ALLOWING APPEAL—Filed January 26, 1942

Appellant in the above entitled suit and cause has prayed for allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of the State of Arizona on the 20th day of October, 1941, affirming the judgment of the Superior Court of Pinal County, Arizona, in said cause

there titled, to wit, The State of Arizona, appellee, v. Charles Jobin, appellant.

It appearing that the appellant in his Brief filed originally in said cause before argument attacked the statute in question on the grounds, as contended by him, that it unreasonably deprives him of freedom to worship ALMIGHTY GOD, freedom of conscience, of speech, of press, and that it is void because discriminatory and unreasonable, and unfairly discriminates as to his occupation, all of which contentions were overruled by decision and judgment of the said Supreme Court of the State of Arizona previously rendered herein.

It appearing that appellant has presented and filed his petition for appeal to the Supreme Court of the United [fols. 147-157] States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from date that said judgment of the Supreme Court of the State of Arizona became final on December 11, 1941, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

It is Now Here Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Arizona and the said judgment of the Superior Court of Pinal County, Arizona, in aforesaid cause as provided by law, and

It is Further Ordered that the Clerk of the Supreme Court of the State of Arizona shall prepare and certify a transcript of the record, proceedings, and judgment in the said cause and transmit the same to the Supreme Court of the United States together with all exhibits in the original form, so that he shall have the same in said Court within twenty (20) days from date.

And it is Further Ordered that security for costs on appeal be fixed in the sum of Five Hundred ($500.00) Dollars, and appellants having presented an undertaking in the sum of Five Hundred ($500.00) Dollars executed by the National Surety Corporation, it is further ordered that such undertaking be and the same is hereby approved and ordered filed.

Dated, January 26, 1942.

Alfred C. Lockwood, Chief Justice of the Supreme Court of the State of Arizona.

[fols. 158-160] UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON—Filed February 19, 1942

Comes now appellant in the above-entitled cause and states that the points upon which he intends to rely in this Court in this cause are as follows:

Point 1. The ordinance of the City of Casa Grande, to wit, City ordinance number 101, as construed and applied to appellant is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of freedom to worship ALMIGHTY GOD, Jehovah, and freedom of conscience, in contravention of Section 1 of the Fourteenth Amendment to the Federal Constitution.

Point 2. The ordinance of the City of Casa Grande, to wit, City ordinance number 101, as construed and applied to appellant is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of freedom of speech and of press, in contravention of Section 1 of the Fourteenth Amendment to the Federal Constitution.

Charlie W. Clark, Hayden C. Covington, Attorneys for Appellant.

[fol. 161] UNITED STATES SUPREME COURT

DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed March 21, 1942

To the Clerk of the Supreme Court of the United States of America:

Please arrange for printing of the following parts of the record in the above entitled cause:

1. The entire record forwarded by the Superior Court of Arizona to the Arizona Supreme Court, being the entire record which the Arizona Supreme Court had before it at the time its decision herein was rendered, including the information and complaint, transcript of the testimony, verdict of the jury, judgment of the Superior Court, notice of

appeal, etc., But Omitting the Printing of each of the following portions:

(a) Plaintiff's Exhibit 2 and Exhibit 3, consisting of a green covered book captioned "Religion" and a buff col-
[fol. 162] ored document captioned "Judge Rutherford Uncovers Fifth Column";

(b) Appellant's opening brief (which is incorporated in the Superior Court record).

2. Opinion of the Arizona Supreme Court dated October 20, 1941.

3. Judgment of the Arizona Supreme Court affirming the judgment of the Arizona Superior Court.

4. Omit printing of the motion for rehearing in the Arizona Supreme Court, and also omit printing supplemental brief on the motion for rehearing, but Print in the record the fact that the motion for rehearing was filed, with date of its filing.

5. Order overruling the motion for rehearing, showing date.

6. Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

7. Order allowing appeal to the Supreme Court of the United States.

8. Statement of points to be relied upon in the Supreme Court of the United States.

9. Order of the Supreme Court of the United States noting probable jurisdiction, dated March 16, 1942.

Hayden C. Covington.

[fol. 163] STATE OF NEW YORK,
County of Kings, ss:

Hayden C. Covington, being sworn, says that he is Attorney for Appellant in the above entitled cause; that he served the within "Designation of Parts of the Record to be Printed" upon counsel for appellee in said cause by sending via air mail, in a securely sealed envelope, fully addressed and with air-mail postage fully prepaid, a true copy thereof to Charles H. Reed, Coolidge, Arizona, and similarly sent a copy to Joe Conway, Attorney General

of the State of Arizona, Phoenix, Arizona, on March 20, 1942.

Hayden C. Covington.

Sworn to and subscribed before me this 20th day of March 1942. William K. Jackson, Notary Public, Kings County. Kings Co. Clks. No. 73, Reg. No. 3005. Commission expires March 30, 1943. (Seal.)

[fol. 164] [File endorsement omitted.]

[fol. 165] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—March 16, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: Enter Hayden C. Covington. File No. 46,294. Arizona, Supreme Court, Term No. 966. Charles Jobin, Appellant, vs. The State of Arizona. Filed February 19, 1942. Term No. 966 O. T. 1941.

